



RIGHTS STUFF

A Publication of The City of Bloomington
Human Rights Commission

City of Bloomington

November 2011

Volume 147

Is Renting Only to Students a Form of Familial Discrimination?

Federal, state and local fair housing laws all prohibit discrimination in housing on the basis of familial status. This means, with some exceptions, that landlords can't refuse to rent to people because they have children.

Callers frequently ask the BHRC if it's legal to rent only to students, or to refuse to rent to students. Typically the answer is yes. Being a student, or not being a student, is not a "protected classification" under fair housing laws. Fair housing laws prohibit discrimination on the basis of race, sex, religion, color, national origin, ancestry, disability, sexual orientation, gender identity and familial status, not on the basis of being a student.

However, a landlord who rents only to students, but refuses to rent to students with children may be violating the law. In 2011, the Interfaith Housing Center of the Northern Suburbs said that Bernsen Management, Inc., refused to rent apartments to people who were not students at Northwestern University.

The Center sent testers to make rental inquiries about Bernsen's apartments. The first tester was asked if she was a student at Northwestern. She told the

property manager that her husband would be in the fall. The manager told her that the "building was not suitable for families and that if she had a family she would be unhappy there." The second tester said he was the spouse of the first tester and said they have a five-year-old daughter. The manager said she didn't think they would be "happy with the apartment, which was designed for students, not families."

The Center sued, and Bernsen tried to get the case dismissed. The Court said that "the complaint contains statements allegedly made by Barry Bernsen to Plaintiff's testers which could lead an ordinary listener to believe either that Defendants have a discriminatory policy against renting to people with families, or that Defendants indicated a preference against renting to people with families." Bernsen may legally rent only to Northwestern students if it wants, but it is not allowed to refuse to rent to a qualified student at Northwestern just because he has a child.

The case is Interfaith Housing Center of the Northern Suburbs v. Bernsen, 2011 WL 2712587 (N.D. Ill 2011). If you have questions about your rights and responsibilities under fair housing laws, please contact the BHRC.

¡HOLA Bloomington! Radio Show Revamps Programming

Bloomington, IN ¡HOLA Bloomington! is pleased to announce the launch of several new distinct radio program offerings including interviews, local and international news, sports, entertainment news and call-in segments offering legal advice and health education. A public opinion segment, a Spanish language version

of EcoReport featuring "news the earth wants you to hear" and a special segment spotlighting Latino members of the IU arts and culture community will also be featured.

The ¡HOLA Bloomington! Spanish Language News and Public Affairs radio show aims to provide the Bloomington community with a communication medium for the City's Spanish speakers. **Cont. pg 2**

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Cocaine Arrest Does Not Qualify as a Disability

Autumn Oliver lived in public housing in South Bend, Indiana. In February, 2011, she was arrested near her home and charged with possession of cocaine and resisting law enforcement.

A month later, Oliver's landlord sent her a notice, saying they were terminating her lease because of her arrest. She had 30 days to vacate the property. The notice said she did not qualify for a pre-termination hearing because of the nature of her arrest. In April, she pled guilty to possession of cocaine and resisting law enforcement. Six days later, before she had to leave the apartment, she sued the housing authority, saying it was treating her as a drug user. She said she did not use

drugs and had completed a drug rehab program. She said the housing authority was discriminating against her on the basis of her disability.

She lost her case. The Court said that the evidence showed that the housing authority terminated her lease only after she was arrested. In other words, the evidence showed her lease was terminated not because she had a disability or because the housing authority perceived her to have a disability, but because she had been arrested. The Court said, quoting another case, "As between the 'obvious alternative explanation' for the arrests, and the purposeful, invidious discrimination respondent asks us to infer, discrimination is not a plausible conclusion."

Oliver argued, quoting the Fair Housing Act, that the housing authority had failed to provide her with any reasonable accommodations. But she provided no facts to support this claim.

She also said that because the housing authority denied her a pre-termination hearing, it had denied her due process. The Court said there was no fundamental right to fair housing, and Oliver had an opportunity to contest her eviction in court. She had all the process that she was due, according to the Court.

The case is A. B. and Linda Kehoe v. Housing Authority of South Bend, 2011 WL 4005987 (N.D. IN 2011). If you have questions about fair housing, please contact the BHRC.

¡HOLA Bloomington! (continued from page 1)

For almost a decade, the bilingual show has brought a mixture of news, entertainment and public opinion to Hispanic and non-Hispanic members of the community.

Long-time host and radio personality Carlos Gonzalez is looking forward to listeners trying out the new programs.

"The ¡HOLA Bloomington! radio show is an integral part of Spanish language news and entertainment for the community," said Gonzalez. "We hope that by providing a variety of new segments we will be able to cater to a more diverse audience."

¡HOLA Bloomington! is a project of the City of Bloomington Community and Family Resources Department and WFHB Community Radio. The show kicks off its new programming side by side with the annual fall Fund Drive at WFHB. Fundraising efforts allow the station to continue providing thought-provoking shows, local independent news and a variety of music shows.

¡HOLA Bloomington! airs each Friday from 6 to 7 p.m. on 91.3 FM | 98.1 Bloomington | 100.7 Nashville | 106.3 Ellettsville. It's followed by two hours of Latin music on Hora Latina. For more information, contact Melissa Britton, 349-3860, or visit www.wfhb.org.

Starbucks ADA Case

Elsa Sallard, a little person, was hired by Starbucks in El Paso, Texas, to work as a barista. The restaurant trained her for three days. Because she was not tall enough to do her job as a barista without an accommodation, she asked for a stool or stepladder. That same day, the restaurant fired her, alleging that she posed a potential danger to customers and employees.

She filed a complaint of disability discrimination against Starbucks with the United States Equal Employment Opportunity Commission. The EEOC sued Starbucks on her behalf, and in August, Starbucks agreed to pay Sallard \$75,000. It also agreed to implement a training program for managers in El Paso to ensure that they understand the ADA and its implications for the restaurant.

Under the ADA, employers have to provide reasonable accommodations for employees with disabilities to help them do their jobs. In most workplaces, providing a short person a stool or stepladder so she can reach what she needs to reach would be a perfectly reasonable accommodation. Whether that would be true in a busy and crowded coffee shop is harder to say. If being a certain height is an essential job duty and stools would be unsafe because of the nature of the workplace, the employer should figure that out before hiring the applicant, not three days later.

If you have a question about the ADA and its implications for you, please contact the BHRC.



Supreme Court to Consider Ministerial Exception to ADA

Cheryl Perich began working for Hosanna-Tabor Evangelical Lutheran Church and School as a contract or lay teacher in the summer of 2009. Contract teachers are hired for one-year renewable terms of employment. A year later, after completing some religious study, she became a "called teacher," meaning she was hired on an open-ended basis and could not be fired without cause. Her duties were the same with either title – she taught several different classes, including a religion class, attended a chapel service with her class once a week and led the chapel service on a rotating basis with other teachers.

In 2004, Perich became ill. She was granted a leave of absence for the 2004-2005 school year, keeping her employer informed about her medical progress. In December of 2004, she told the principal, Stacy Hoeft, that her doctor thought she would be able to return to work in two or three months. In January, Hoeft told her that the school board was going to amend its handbook to say that employees who were on disability for more than six months would be asked to resign; at this point, Perich had been on disability leave for more than five months.

A week later, Perich told Hoeft that she would be able to return to work between February 14 and February 28. Hoeft expressed surprise at this news, because only a few days earlier, she had told him that she couldn't complete some forms because of her medical condition. He also said that she could not return to the same classroom because the substitute teacher they had hired had a one-year contract.

Three days later, the school board decided that it was unlikely that Perich could return to work that year. They proposed that she accept a

"peaceful release agreement" by which she would resign in exchange for the school paying part of her health insurance for the remainder of the year.

Perich's doctor said she could return to work without restrictions on February 22, but the school board still had concerns. Since her doctor said she could return to work, she would lose her disability benefits. But still, the school board wanted her to resign voluntarily. She reported to work and refused to leave until the school signed a letter acknowledging that she had shown up; otherwise, she might have been fired for failing to return to work when her doctor said she was able. She spoke with Hoeft later that day, telling him that she planned to assert her legal rights against discrimination if she could not reach an acceptable compromise with the school.

The school fired her, citing her "disruptive behavior" on the day she returned to work and saying she had "damaged, beyond repair, her working relationship with Hosanna-Tabor by threatening to take legal action."

Perich sued under the Americans with Disabilities Act, alleging the school had discriminated against her for having a disability and retaliated against her for threatening to pursue her legal rights. The school said that it fell within the ministerial exception to the ADA. The Court of Appeals ruled in Perich's favor in 2010, and now the case is before the United States Supreme Court.

The ministerial exception says that religious employers may give preference in employment to individuals of a particular religion and may require that all employees conform to the religious tenets of the organization. As Congress said in the

House Report to the ADA, "Assuming that a Mormon organization wishes to hire only Mormons to perform certain jobs. If a person with a disability applies for the job, but is not a Mormon, the organization can refuse to hire him or her. However, if two Mormons apply for a job, one with a disability and one without a disability, the organization cannot discriminate against the applicant with the disability because of that person's disability."

For the exception to apply, the employer must be a religious institution, and the employee must be a ministerial employee. The school in this case was a religious institution, but the Court of Appeals said that Perich was not a ministerial employee. Her job duties were the same whether she was a contract teacher or a called teacher. She spent six hours and 15 minutes of her seven-hour teaching day teaching secular subjects, using secular textbooks, without incorporating religion into the secular material. The school's personnel policy contemplated that teachers would be protected by employment discrimination and contract laws. At least one teacher with the same job duties was not a Lutheran. The Court said that it had to look at the person's job duties and not job title in making its decision.

The lower court opinion is found at [Equal Employment Opportunity Commission and Cheryl Perich v. Hosanna-Tabor Evangelical Lutheran Church and School](#), 597 F.3d 769 (6th Cir. 2010). The U.S. Supreme Court heard arguments in the case in October of 2011 and is expected to issue its decision by the summer of 2012.



City of Bloomington Council for Community Accessibility Invites Public to Awards Ceremony and Workshop

Mayor Mark Kruzan and the City of Bloomington's Council for Community Accessibility (CCA) are sponsoring an awards ceremony on Wednesday, Nov. 2, 2011, from 7 to 9 p.m. at St. Mark's United Methodist Church, 100 N. State Road 46 Bypass, Bloomington, IN. The ceremony, which is open to the public, recognizes individuals and groups in Bloomington who make our community a better place for people with disabilities.

The program includes light desserts, live music, and keynote and annual awards presentations. Sally Conway, director of Americans with Disabilities Act Technical Assistance with the Civil Rights Division of the U.S. Department of Justice, will give the keynote address. The awards ceremony will begin at 8 p.m. and will include the Mayor's Award presented by Mayor Mark Kruzan and sponsored by Ivy Tech Community College.

Those planning to attend or needing accessibility accommodations should RSVP to Craig Brenner by Friday, Oct. 28 by calling 812-349-3471 or e-mailing brennerc@bloomington.in.gov.

In addition to the awards ceremony, the CCA is sponsoring a free workshop on Thursday, Nov. 3 from 9 a.m. to 12:30 p.m. at St. Mark's United Methodist Church, 100 N. State Road 46 Bypass, Bloomington, IN. Conway will give a talk entitled, "The ADA: How the New Accessibility Regulations Affect You!" She will highlight recent and upcoming changes in ADA regulations regarding governmental organizations and public accommodations. People who have disabilities or who advocate for those with disabilities, people who work for governmental organizations, and business owners and employees should all be familiar with the new regulations.

Workshop participants will learn about the new definition of service animal, new requirements for accessible seating and ticketing, new definitions of wheelchairs and powered mobility devices, and how the ADA applies to new communications technologies. Barbara McKinney, director of the City of Bloomington Human Rights Commission, will talk about local accessibility issues. The free workshop will include a continental breakfast.

Major underwriters for the ceremony and workshop include Ivy Tech Community College and Cook, Inc. Sponsors include Indiana Institute on Disability and Community, IU Health, Options, Southern Indiana Center for Independent Living, Stone Belt Arc, Inc. and the IU Credit Union.

For more information and to RSVP or to request accessibility accommodations, contact Craig Brenner, Special Projects Coordinator. Community and Family Resources, at 812-349.3471 or brennerc@bloomington.in.gov.